

- (1) Claimant, at the preliminary hearing, requested medical treatment for an alleged right arm and hand injury. She claims she injured her right arm and hand while performing

repetitive work activities while working in respondent's mold maintenance and repair area. Claimant specifically recalls, while she was working, that on numerous occasions she hit the molds with her right elbow. Claimant's symptoms include numbness and loss of grip strength. She alleges a date of accident from March 1997 through July 29, 1997, her last day worked. In addition to her right arm and hand symptoms, claimant testified she also had chest pains. The respondent terminated claimant on July 29, 1997, for reasons not fully explained in the preliminary hearing record.

Claimant testified respondent sent her for medical treatment to the company doctor, Dr. F. Allen Moorehead, Jr. Claimant, however, testified that Dr. Moorehead's services were paid by the private health insurance company instead of workers compensation insurance. Dr. Moorehead referred claimant to R. J. Loffer, M.D., for a neurological consultation.

Dr. Loffer's medical record was admitted into evidence at the preliminary hearing. He found claimant to have right arm numbness. The nerve conduction studies showed median nerve mononeuritis. The doctor also diagnosed thoracic outlet syndrome. He recommended use of wrist splints and, if symptoms persisted, further diagnostic testing.

Claimant was also examined on January 7, 1998, at her attorney's request, by Jay Stanley Jones, M.D. Dr. Jones's medical record was also admitted into evidence at the preliminary hearing. Dr. Jones found claimant complained of her hands going to sleep caused by her work activities. The doctor found the nerve conduction studies indicated neuropathy of the right hand. From his physical examination, he found gross atrophy of her thenar (palm of hand) eminence of the right hand. Dr. Jones recommended repeat nerve conduction studies and for claimant to continue to wear splints.

Claimant testified she told two of her supervisors, Jan Botts and Ellen Smith, that she had symptoms in her right arm and hand caused by her work activities. Claimant also testified she told James Casper, respondent's human relations director, in January or February 1997 about her right arm and hand problems.

James Casper, Ellen Smith, and Jan Botts also testified in person at the preliminary hearing before the Administrative Law Judge. All denied claimant had told them she had injured her right arm and hand at work. All testified, however, that they did know claimant had chest pains while she was employed by the respondent. Mr. Casper testified he believed the company had not sent claimant to see Dr. Moorehead. He recalled claimant had gone on her own to see Dr. Moorehead because of her chest pains.

Claimant testified, after her termination, she went to work in September of 1997 for another employer putting hinges on doors of cabinets. Claimant testified after only nine days she had to quit that job because of the pain in her right arm. Respondent argues claimant's present right arm and hand problems are the result of her work activities at this other employer.

The Appeals Board finds there is no evidence in the record that claimant suffered a permanent aggravation of her right arm and hand problem while working only nine days for the other employer. The Appeals Board concludes claimant's testimony and the medical records admitted into evidence at the preliminary hearing prove it is more probably true than not that claimant's right arm and hand injury is causally related to her work activities while employed by the respondent.

The Appeals Board also concludes that claimant's appropriate date of accident is her last day worked, July 29, 1997. The preliminary hearing record is not clear whether or not claimant's termination was related to her arm and hand problems. Nevertheless, the preliminary hearing record indicates claimant worked at her regular job with right arm and hand symptoms through her last day worked. Furthermore, claimant remained symptomatic on the date of the preliminary hearing. Therefore, even if claimant did not leave work because of her injury, the evidence as a whole establishes that her work activities more probably than not aggravated her right arm and hand injury through her last day worked.

(2) As previously noted, the claimant testified she notified her two supervisors and the human relations director of her work-related injury. All of the respondent's representatives testified claimant had not notified them of her work-related injury. The answer to the notice question, therefore, hinges on the credibility of the witnesses. The Administrative Law Judge had the opportunity to personally assess all of the witnesses' demeanor and judge their credibility. The Administrative Law Judge granted claimant's request for medical treatment. Therefore, the Administrative Law Judge had to find claimant truthful. The Appeals Board finds some deference should be given to the Administrative Law Judge's conclusion because he was able to see the witnesses testify in person. The Appeals Board concludes, giving some deference to the Administrative Law Judge, that claimant gave timely notice of accident to the respondent.

(3) The respondent argues claimant failed to serve a timely written claim for compensation benefits on respondent within 200 days of the date of accident. See K.S.A. 44-520a. The respondent also argues claimant's appropriate date of accident is May 13, 1997, the date she was examined and treated by Dr. Loffer. The respondent did not receive a demand from claimant for workers compensation benefits until December 3, 1997. Consequently, the respondent contends written claim for compensation was not timely because it was served on respondent in 204 days instead of the required 200 days.

The Appeals Board previously found claimant's appropriate date of accident is July 29, 1997. Therefore, claimant's claim for compensation served on the respondent on December 3, 1997, is timely because it is within 200 days from her date of accident.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the

preliminary hearing Order dated January 29, 1998, entered by Administrative Law Judge John D. Clark should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 1998.

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BOARD MEMBER

c: Robert R. Lee, Wichita, KS  
Kirby A. Vernon, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director